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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,909	04/04/2001	David L. Thompson	P-8999	3722

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EXAMINER

OROPEZA, FRANCES P

ART UNIT PAPER NUMBER

3762

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/825,909

Applicant(s)

THOMPSON ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Response to Amendment filed 12/27/02***

1. Prior to the amendment, claims 1-7 were pending in this application.

By the amendment, claims 1-3 and 5-7 were amended in an attempt to overcome the prior art of record and to successfully address the 35 U.S.C. 112 rejections of record. The Applicant's comments have been fully considered and are addressed in paragraph 2 of this action.

Claims 1-7 are pending in this application; claims 1 and 6 are independent.

2. The following comments relate to the prior art of record.

Prochazka et al.

The Applicant states the Prochazka et al. device does not involve an implantable medical device. Instead, Applicant asserts that the stimulator only provides the stimulation pulses to the muscles using contact pads and electrodes (95).

Prochazka et al. does provide an implantable medical device, an implanted muscle microstimulator (72) (figure 7; c 6, ll 46-54). As noted in figure 8 – reference numeral 95, the connector pads are associated with electrodes or antenna/implant, hence the stimulator provides the stimulation pulses to the muscles using both contact pads and the implanted muscle microstimulator (72) (figure 7; c 6, ll 46-54).

Claim 5 was amended, removing “a sensor...(of) physiological data for use in... therapy”, hence overcoming the Prochazka et al. rejection of claim 5. The 35 U.S.C. 102(b) rejections of claim 5 as being anticipated by Prochazka et al. is withdrawn. The 35 U.S.C. 102(b) rejections of claims 1-4 and 6-7 as being anticipated by Prochazka et al. stand as noted in paragraph 4 of this action.

Feingold

The Applicant states Feingold normally functions as an open loop infusion system operating in accordance with pre-programmed profiles and only intermittently accesses a physiological sensor. Applicant further asserts that Feingold does not teach a dynamic closed loop self-monitoring system in continuous communication with an IMD to effect operational/functional changes in the IMD.

Feingold discloses an infusion system with a feedback loop operating in accordance with a pre-selected profile that accesses the physiological sensor data according to the profile (c 2, ll 34-43 and 57-60). An open loop - intermittent access system and a dynamic closed loop self-monitoring system are viewed as similar systems, the difference being the frequency with which the information from the physiological sensor is incorporated in the control system. Feingold teaches the information can be incorporated in the control system less frequently (c 2, ll 49-56) or more frequently (c 2, ll 57-66), hence Feingold does teach a dynamic closed loop self-monitoring system in continuous communication with an IMD to effect operational/functional changes in the IMD (c 3, ll 8-23).

The 35 U.S.C. 102(b) rejections of claims 1-2 and 4-7 as being anticipated by Feingold stand as noted in paragraph 5 of this action. The 35 U.S.C. 103(a) rejections of claim 3 being unpatentable over Feingold in view of Amano et al. stands as noted in paragraph 6 of this action.

***Claim Rejections - 35 USC § 112***

3. Claims 3, 4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is vague because it is unclear if "a sensor" in claim 3 is the same as "said physiological sensor" of claim 1.

In claim 4, "said means for transmitting medical data" lacks antecedent basis.

Claim 6 is indefinite because the IMD is inferentially claimed.

***Claim Rejections - 35 USC § 102***

4. Claims 1-4 and 6-7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Prochazka et al. (US 5562707) for the reasons of record and the discussion in paragraph 2 of this action.

5. Claims 1-2 and 4-7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Feingold (US 4871351) for the reasons of record and the discussion in paragraph 2 of this action.

***Claim Rejections - 35 USC § 103***

6. Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Feingold (US 4871351) in view of Amano et al. (US 5941837) for the reasons of record and discussion in paragraph 2 of this action.

***Conclusion***

**THIS ACTION IS MADE FINAL.** The Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

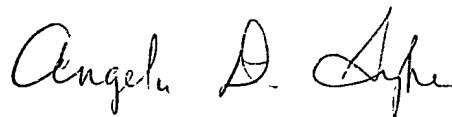
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza  
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310  
1/29/03



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